

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-397
SENATE BILL 183

AN ACT TO ESTABLISH CERTAIN STATUTORY STANDARDS FOR SELECTIVE VEGETATION REMOVAL WITHIN THE RIGHTS-OF-WAY OF THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-93 reads as rewritten:

"§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

(a) No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the Department of Transportation in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the Department of Transportation or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the Department of Transportation in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, ~~and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed,~~ and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Department of Transportation or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Department of Transportation or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Department of Transportation, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Department of Transportation or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall be guilty of a Class 1 misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law.

(b) Except as provided in G.S. 136-133.1(g), no vegetation, including any tree, shrub, or underbrush, in or on any right-of-way of a State road or State highway shall be planted, cut, trimmed, pruned, or removed without a written selective vegetation removal permit issued pursuant to G.S. 136-133.2 and in accordance with the rules of the Department. Requests for a permit for selective vegetation cutting, thinning, pruning, or removal shall be made by the owner of an outdoor advertising sign or the owner of a business facility to the appropriate person in the Division of Highways office on a form prescribed by the Department. For purposes of this section, G.S. 136-133.1, 136-133.2, and 136-133.4, the phrase "outdoor



advertising" shall mean the outdoor advertising expressly permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5). These provisions shall not be used to provide visibility to on-premises signs.

(c) For outdoor advertising, vegetation cut or removal limits shall be restricted to a maximum selective vegetation cut or removal zone for each sign face pursuant to the provisions of G.S. 136-133.1.

(d) If the application for vegetation cutting, thinning, pruning, or removal is for a site located within the corporate limits of a municipality, the municipality shall be given 30 days to review and provide comments on the application if the municipality has previously advised the Department in writing of the desire to review such applications and the name of the local official to whom notice of such application should be directed."

SECTION 2. Article 7 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-93.2. Monetary value of trees.

The monetary value for existing trees removed and eligible for reimbursement to the Department as provided in G.S. 136-93 or G.S. 136-133.1 from State rights-of-way shall be determined on an annual basis by the Department. In determining the value of existing trees removed, the average cost per caliper inch shall be based on the lower value of either the average wholesale commercial nursery prices for hardwood and conifer plants, times a 2.5 multiplier for installation and warranty or the average cost per caliper inch for tree planting contracts let by the Department in the previous calendar year. The values shall be determined and published by the Department no later than December 15 of each year. The values established pursuant to this section shall be used in calculating the monetary value of trees removed from State rights-of-way beginning January 1 of each year. If the Department fails to publish changes in values by December 15, then the values existing on December 15 shall be applicable to existing trees removed and eligible for reimbursement for the following year."

SECTION 3. G.S. 136-133 is amended by adding a new subsection to read:

"(c) No electrical permit shall be denied to an outdoor advertising sign described in G.S. 136-129(4) and G.S. 136-129(5) for which the Department has issued a permit which has not been revoked, and the electrical permit is otherwise compliant with technical utility standards."

SECTION 4. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-133.1. Outdoor advertising vegetation cutting or removal.

(a) The owner of an outdoor advertising sign permitted under G.S. 136-129(a)(4) or G.S. 136-129(a)(5) who obtains a selective vegetation removal permit, and the owner's designees, may cut, thin, prune, or remove vegetation in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4. The maximum cut or removal zone for vegetation for each sign face shall be determined as follows:

- (1) The point located on the edge of the right-of-way that is the closest point to the centerline of the sign face shall be point A.
- (2) The point located 200 feet down the right-of-way line in the direction of the sign viewing zone shall be point B.
- (3) The point on the edge of the pavement of the travel way, including acceleration and deceleration ramps, that is the closest to the centerline of the sign shall be point C.
- (4) The point 50 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point D.
- (5) The point 380 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E; provided, however, the

following shall apply within the corporal limits and territorial jurisdiction of any city, as defined in Chapter 160A of the General Statutes:

- a. On interstates or other routes with fully controlled access, the point 340 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.
- b. On highways other than interstates and other routes with fully controlled access, the point 250 feet down the edge of the pavement in the direction of the sign viewing zone from point C shall be point E.

(6) Lines drawn from point A to point D and from point B to point E shall define the limits of the vegetation cut or removal area.

(b) Vegetation permitted to be cut, thinned, pruned, or removed shall be defined as any tree, shrub, or underbrush within the zone created by points A, B, D, and E. Any existing tree that was in existence at the time that an outdoor advertising structure was erected shall only be eligible for removal in accordance with subsections (c), (d), and (e) of this section. Native dogwoods and native redbuds shall be preserved. For the purposes of this section, an existing tree is defined as a tree that had a diameter of four inches or greater as measured six inches from the ground at the time that the outdoor advertising structure was erected. An outdoor advertising sign is considered erected when the sign is completely constructed with a sign face.

(c) The applicant for a selective vegetation removal permit shall submit to the Department a site plan locating thereon any trees existing at the time that the outdoor advertising sign was erected, as defined in subsection (b) of this section, that are requested to be cut, thinned, pruned, or removed, and noting their species and total caliper inches. The applicant shall also tag, with highly visible material or flagging, any tree that is, at the time of the application for a selective vegetation removal permit, greater than four inches in diameter as measured six inches from the ground and requested to be cut, thinned, pruned, or removed. The selective vegetation removal request may be investigated on-site by Department personnel and a representative of the applicant. In the event that the Department disputes the accuracy of the existing tree information on the site plan noted above, the Department shall notify the applicant in writing and may request the following:

- (1) A tree survey.
- (2) That the applicant amends the site plan.
- (3) That the applicant deletes the trees in dispute from the desired cutting.

If a notice of disputed tree information is received from the Department, the applicant can either employ the services of a North Carolina licensed landscape architect or certified arborist to perform a tree survey, amend the site plan, or notify the Department in writing that any or all of the disputed trees are deleted from the application. If the applicant selects a tree survey, the landscape architect or certified arborist will submit a report under seal that contains a tree inventory of existing trees in the removal zone for the outdoor advertising structure and include the age of any tree that existed at the time that the sign was erected. The report will categorize tree species and include a site map of sufficient detail and dimensions. A tree survey will not be required for subsequent applications to cut, thin, prune, or remove trees at the same site for trees that have been previously permitted. Any dispute relating to whether or not the tree existed at the time the outdoor advertising sign was erected shall be conclusively resolved by information in the report from the licensed landscape architect or certified arborist.

(d) Except as provided in subsection (e) of this section, trees existing at the time the outdoor advertising sign was erected may only be removed within the zone created in subsection (a) of this section if the applicant satisfies one of the following two options selected by the applicant: (i) reimbursement to the Department pursuant to G.S. 136-93.2 or (ii) trees that existed at the time of the erection of the sign may be removed if the applicant agrees to remove two nonconforming outdoor advertising signs for each sign at which removal of

existing trees is requested. The surrendered nonconforming signs must be fully disassembled before any removal of existing trees is permitted and shall not be eligible for future outdoor advertising permits in perpetuity.

(e) Removal of trees and vegetation of any age, including complete removal, except for native dogwoods and native redbuds, shall be permitted within the cut or removal zone established in subsection (a) of this section if the applicant for the selective vegetation removal permit, in lieu of compliance with subsection (d) of this section, agrees to submit to the Department a plan for beautification and replanting related to the site for which the vegetation permit request is made. The Department shall develop rules for compensatory replanting, including the criteria for determining which sites qualify for replanting, and shall, in consultation with the applicant and local government representatives, determine which sites must be replanted, and the types of plants and trees to be replanted. The replanting and maintenance shall be conducted by the applicant or his or her agents in accordance with the rules adopted by the Department. If the conditions detailed in this subsection are agreed to by the applicant and approved by the Department, there shall be no reimbursement to the Department under G.S. 136-93.2 for removal of trees that existed at the time the outdoor sign was erected, nor shall the applicant be required to remove two nonconforming outdoor advertising signs for removal of existing trees at the site.

(f) Tree branches within a highway right-of-way that encroach into the zone created by points A, C, and D may be cut or pruned. Except as provided in subsection (g) of this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor advertising and within the limits of the highway right-of-way for the purpose of enhancing the visibility of outdoor advertising unless permitted to do so by the Department in accordance with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

(g) Notwithstanding any law to the contrary, the owner of an outdoor advertising sign defined by subsection (a) of this section or the owner's designees may, working only from the private property side of the fence, without charge and without obtaining a selective vegetation removal permit, cut, trim, prune, or remove any tree or other vegetation except for native dogwoods or native redbuds that is (i) less than four inches in diameter at the height of the controlled access fence, (ii) located within 200 feet on either side of the existing sign location as defined by point A and point B in G.S. 136-133.1(a)(1) and (2), and (iii) a distance of three feet from a controlled access fence within the limits of the highway right-of-way. The activities permitted by this subsection must be performed from the private property owner side of the controlled access fence and with the consent of the owner of the land that is used to access said fence.

(h) No additional funds from the Highway Trust Fund shall be used for the purpose of vegetation replacement under the provisions of this section.

(i) The Department may revoke an outdoor advertising permit for the unlawful destruction or illegal cutting of vegetation within the right-of-way of any State-owned or State-maintained highway only if both of the following conditions are met:

- (1) The unlawful destruction or illegal cutting occurred within 500 feet of either side of the corresponding sign location measured along the edge of pavement of the main travel way of the nearest controlled route and was willfully caused by one or more of the following:
 - a. The sign owner.
 - b. The permit holder.
 - c. The lessee or advertiser employing the sign.
 - d. Any employees, agents, or assigns of persons listed in sub-subdivisions a. through c. of this subdivision, including, but not limited to, independent contractors hired by any of the above

persons, or the owner of the property upon which the sign is located, if expressly authorized by the above persons to use or maintain the sign.

- (2) There is substantial, material evidence that the unlawful destruction or illegal cutting of vegetation would create, increase, or improve a view to the outdoor advertising sign for passing motorists from the main travel way of the nearest controlled route."

SECTION 5. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-133.2. Issuance or denial of a selective vegetation removal permit.

Except as provided in G.S. 136-133.1(g), permits to remove vegetation may be granted for outdoor advertising locations that have been permitted for at least two years prior to the date of application. The Department shall approve or deny an application submitted pursuant to this section, including the fee required by G.S. 136-18.7 and all required documentation, within 30 days of the receipt of an application for a selective vegetation removal permit. If written notice of approval or denial is not given to the applicant within the 30-day period, then the application shall be deemed approved. If the application is denied, the Department shall advise the applicant, in writing, by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, the reasons for the denial."

SECTION 6. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-133.3. Appeals of selective vegetation removal permit decisions.

(a) An applicant for a selective vegetation removal permit issued pursuant to G.S. 136-133.2 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section.

(b) Within 30 days of service of the Department's decision to deny or condition a selective vegetation removal permit issued pursuant to G.S. 136-133.4, the applicant shall submit a written appeal to the Secretary of Transportation setting forth with particularity the facts and arguments upon which the appeal is based. The appeal shall be sent to the Secretary by registered or certified mail, return receipt requested, addressed to the Secretary, and delivering to the addressee, with a copy to the Department official who issued the decision.

(c) Upon receipt of the written appeal, the Secretary of Transportation shall review the written appeal and the Department's decision, as well as any available documents, exhibits, or other evidence bearing on the appeal, and shall render the agency's final decision, supported by findings of fact and conclusions of law. The final agency decision shall be served upon the appealing party by registered or certified mail, return receipt requested, addressed to the applicant, and delivering to the addressee, within 90 days after the Secretary receives the written appeal. A copy of the agency's final decision shall also be delivered to the Department official who issued the initial decision.

(d) A person aggrieved by a decision made pursuant to this section may seek judicial review of the final agency decision pursuant to G.S. 136-134.1."

SECTION 7. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-133.4. Selective vegetation removal permits.

(a) Selected vegetation within the approved limits shall be cut, thinned, pruned, or removed by the permittee or the permittee's agent in accordance with accepted International Society of Arboriculture (ISA) standards.

(b) Permits are valid for a period of one year. The permittee may cut, thin, prune, or remove vegetation more than one time per year. A 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way.

(c) The permittee, or the permittee's agent, shall not impede the flow of traffic on any highway while performing vegetation removal authorized by a permit. Access to the work site on controlled access highways must be gained without using the main travel way of the highway. The Department shall determine the traffic control signage that may be required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department. The permittee, or the permittee's agent, shall wear safety vests that conform to OSHA standards while performing the work.

(d) Any damage to vegetation designated to remain at the site, to highway fences, signs, paved areas, or other facilities shall be repaired or replaced by the permittee to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent. All trimmings, laps, and debris shall be removed from the right-of-way and disposed of in areas provided by the permittee. No burning or burying of trimmings, laps, or debris shall be permitted on the highway right-of-way. When chipping is used to dispose of trimmings, chips may be neatly spread on a right-of-way at locations which the Department determines will not be harmful to the environment or affect traffic safety.

(e) Willful failure to substantially comply with all the requirements specified in the selective vegetation removal permit, unless otherwise mutually resolved by the Department and the permittee, shall result in a five-year moratorium for vegetation removal at the site, a summary revocation of the outdoor advertising permit if such willful failure meets the standards in G.S. 136-133.1(i), payment of Department investigative costs, and forfeiture of any applicable performance bond as determined by the Secretary. The moratorium shall begin upon execution of a settlement agreement or entry of a final disposition in the case."

SECTION 8. Article 11 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-133.5. Denial of a permit for proposed outdoor advertising.

(a) When a district engineer determines that a proposed outdoor advertising structure would not conform to the standards of outdoor advertising as set out in the Outdoor Advertising Control Act, the district engineer shall refuse to issue a permit for that proposed outdoor advertising structure.

(b) When a violation of the Outdoor Advertising Control Act has been discovered, the district engineer shall notify the permit applicant by registered or certified mail, return receipt requested, addressed to the party to be noticed, and delivering to the addressee, in writing, the reason for the denial and the statutes or rules forming the basis for the denial and include a copy of the Act.

(c) The Department shall not issue permits for new outdoor advertising signs at a sign location for a period of five years where the unlawful destruction or illegal cutting of vegetation has occurred within 500 feet on either side of the proposed sign location and as measured along the edge of the pavement of the main travel way of the nearest controlled route. For the purposes of this section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department. Before a permit is denied pursuant to this subsection, the Department shall reveal some evidence that the unlawful destruction or illegal cutting would create, increase, or improve a view to a proposed outdoor advertising sign from the main travel way of the nearest controlled route. The five-year period shall begin on the date the Department executes a settlement agreement or final disposition of the case is entered. The five-year prohibition period for a new sign permit shall apply to all sign locations, including the following:

- (1) Sign locations where the unlawful destruction or illegal cutting of vegetation occurs prior to the time the location becomes a conforming location.

- (2) Sign locations where a revocation of an existing permit has been upheld and a sign has been removed.
- (3) Sign locations where the unlawful destruction or illegal cutting occurs prior to receipt of an outdoor advertising permit.
- (4) Sign locations where the unlawful destruction or illegal cutting occurs following receipt of an outdoor advertising permit application, but prior to the issuance of the permit by the Department.

(d) The Department shall not issue permits for new outdoor advertising signs at a sign location where existing trees, if they were to reach the average mature size for that species, would make the proposed sign faces, when erected, not completely visible from the viewing zone. "Existing trees" are those trees that at the time of the permit application are four inches or greater in diameter as measured six inches from the ground. "Viewing zone" means the area which is 500 feet as measured along the edge of the main travel way of the controlled route on each side of the proposed sign structure which will have a sign face.

(e) An outdoor advertising permit requested pursuant to G.S. 136-129(a)(4) shall not be issued to a location if the zoning to commercial or industrial zones was adopted within one year prior to the filing of the permit application and is not part of comprehensive zoning or constitutes spot zoning, which, for purposes of this subsection, shall be defined as zoning designed primarily for the purpose of permitting outdoor advertising signs and in an area which would not normally permit outdoor advertising. Zoning shall not be considered "primarily for the purpose of permitting outdoor advertising signs" if the zoning would permit more than one principal commercial or industrial use, other than outdoor advertising, and the size of the land being zoned can practically support any one of the commercial or industrial uses.

(f) Outdoor advertising permits shall not be issued to a location for a period of 12 months prior to the proposed letting of a new construction contract that may affect the spacing or location requirements for an outdoor advertising structure until the project is completed. The prohibition authorized by this subsection shall not extend for a period longer than 18 months. Priority in spacing shall be given by the Department to the first submitted application for an outdoor advertising permit at the location.

(g) Outdoor advertising permits shall not be issued for a location on a North Carolina or United States route designated as a scenic byway."

SECTION 9. G.S. 136-127 reads as rewritten:

"§ 136-127. Declaration of policy.

The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary highway systems within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and ~~devices~~ devices, and to secure the right of validly permitted outdoor advertising to be clearly viewed by the traveling public. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising."

SECTION 10. The Department of Transportation shall adopt temporary rules to administer this act.

SECTION 11. Sections 10 and 11 of this act are effective when this act becomes law. The remainder of this act becomes effective September 1, 2011, and applies to permit applications or renewals submitted on or after that date and to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:20 p.m. this 18th day of July, 2011